The following case is an interesting study of when the courts will impose a duty of care upon mental health facilities to follow up on patients and in making decisions to voluntarily detain them.

**Mental illness and duty of care**

*Australian Capital Territory v Crowley, The Commonwealth of Australia* [2012] ACTCA 52 involved the response of ACT Mental Health (ACTMH) and the Australian Federal Police (AFP) to Jonathan Crowley, a mentally ill man suffering a psychotic episode.

The AFP had received reports that a person was walking the streets in a highly disturbed state and behaving in a threatening manner to a number of people whilst carrying a kendo stick. When two AFP officers found Mr Crowley, he refused to comply with their directions and reacted violently, assaulting both officers with the kendo stick. The plaintiff was shot in the neck by one of the AFP officers, shattering the plaintiff’s spinal column and leaving him a quadriplegic. The reasonableness of the shooting itself was not an issue in the case.

The previous day, ACTMH had been notified of Mr Crowley’s condition and had made an assessment suggesting that he required hospitalisation. A plan was made to follow-up the next morning. On the morning of the day of the shooting, Mr Crowley’s father informed ACTMH that his son would be voluntarily admitted to hospital, and no further follow-up was made by ACTMH. Another ACTMH staff member was also aware of the Mr Crowley’s condition as part of his role with Mr Crowley’s brother.

The plaintiff argued the AFP and ACTMH owed a duty of care to him that had been breached. It was further argued by the plaintiff that the Commonwealth and the ACTMH were vicariously liable for the alleged breaches committed by the AFP and ACTMH.

Mr Crowley successfully sued the federal and ACT governments at first instance, receiving an award of $8 million. The trial judge found the police owed a duty of care to Mr Crowley as he was “under their control” and this duty was breached by a failure to plan ahead and in their approach to Mr Crowley at the scene.

In relation to ACTMH, the trial judge found the mental health service had a duty of care similar to that of doctor and patient and this duty had been breached by not following up the previous day’s report and admitting Mr Crowley to hospital, and by also failing to inform Mr Crowley’s parents of the other staff member’s observations on the morning of the shooting.

On appeal, the court found that the trial judge had erred in finding that particular duties of care were owed to Mr Crowley by the AFP and the ACTMH, and that they had breached these duties.

The Court of Appeal found that although a duty of care was owed to Mr Crowley by the ACTMH following an assessment performed the night before the shooting, the scope of this duty was not, at that time, the same as the duty in a doctor/patient relationship as they were not providing him with treatment. The scope of the duty was to follow up on his condition and this duty had been met following a call from Mr Crowley’s father to the mental health crisis team on the morning of the shooting. Mr Crowley’s father had advised that his son’s condition had not deteriorated and that he did not think intervention and involuntary detention was required as he thought he would be able to take his son to hospital for care. The Court of Appeal held that there was no negligence on the part of the ACTMH in relying on the father’s assessment of the situation as it was reasonable to accept his statement that his son would voluntarily admit himself to hospital.

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The court disagreed with the conclusion at first instance that the ACTMH owed a duty of care to use the power to apprehend a person and take them to an approved health facility under section 37(2) of the Mental Health (Treatment and Care) Act 1994. Further, the court held that the trial judge had made an impermissible use of hindsight in determining whether there was a breach in relation to the ACTMH employee not reporting his observations to the Crowley family.

An application for special leave to appeal to the High Court was denied due to insufficient prospects of success.1

This case represents an interesting study of when the courts will impose a duty of care upon mental health facilities to follow up on patients and in making decisions to voluntarily detain them.  

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